

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MILDRED C. FREESTON, et al.,

Plaintiffs,

CASE NO. C09-5560BHS

BISHOP, WHITE & MARSHALL, P.S.,
et al.,

ORDER

Defendants.

This matter comes before the Court on a motion to dismiss certain Defendants and numerous motions by Plaintiffs.

I. PROCEDURAL HISTORY

On September 17, 2009, Plaintiffs filed a complaint (Dkt. 2) and an Emergency Motion for Removal of Case from Pierce County Superior Court (Dkt. 6). Plaintiffs assert that the Court has jurisdiction pursuant to 42 U.S.C. § 1983 and “other Federal Statutes . . .” Dkt. 2, ¶ 1. The majority of Plaintiffs’ claims are based on fraud, but one claim asserts a violation of the Federal Truth in Lending Act. *Id.*, ¶ 19.

On September 21, 2009, Plaintiffs filed a First Amended Complaint. Dkt. 8.

On September 22, 2009, the Court denied Plaintiffs' emergency motion for removal. Dkt. 9.

On October 26, 2009, Defendant Chevy Chase Bank appeared in this matter. Dkt.

1 On November 12, 2009, Plaintiffs filed an Emergency Motion/Application for
2 Temporary Restraining Order. Dkt. 12. In support of their motion, Plaintiffs have
3 submitted an eviction notice that states that eviction will occur at 6 AM on November 16,
4 2009. *Id.*, Exh. 1 at 14.

5 On November 13, 2009, the Court requested a response from Defendant Chevy
6 Chase Bank (Dkt. 13), Defendant filed a response (Dkt. 14), and the Court denied
7 Plaintiffs' motion because of (1) Plaintiffs' procedural errors and (2) Plaintiffs' failure to
8 meet their burden on the elements of preliminary relief. Dkt. 16.

9 On November 20, 2009, Plaintiffs filed a Motion for Injunction. Dkt. 21. On
10 November 24, 2009, the Court ordered responses from Defendants. Dkt. 25. On
11 December 4, 2009, Defendants Pierce County, Pierce County Superior Court, Robyn Ann
12 Lindsay, Bryan Chushcoff, Pierce County Sheriff Department, and Paul Pastor responded
13 and included a motion to dismiss (Dkt. 27); Defendants Fannie Mae, Bishop, White &
14 Marshall, P.S., William L. Bishop, Jr, Krista L. White, Ann T. Marshal, Daniel Hembree,
15 and Annette Cook responded (Dkt. 29); and Defendant Chevy Chase Bank responded
16 (Dkt. 29).

17 On December 22, 2009, the Court denied Plaintiffs' Motion for Injunction. Dkt.
18 45.

19 On December 23, 2009, Plaintiffs filed a Motion for Taansen Fairmont Sumeru to
20 Act (Dkt. 39), a Motion to Strike Bishop, White & Marshall Filings With Prejudice and
21 Default Order (Dkt. 41), and a Motion to Strike Pierce County Filings With Prejudice and
22 Default Order (Dkt. 42).

23 On Januaury 12, 2009, Plaintiffs filed a Notice of Appeal (Dkt. 48) and a Motion
24 to Waive Fee (Dkt. 49).

25 **II. FACTUAL BACKGROUND**

26 In the complaint, Plaintiffs allege facts as follows:

27 Defendant CHEVY CHASE BANK FSB induced Charles E.
28 Freeston, prior to his death, and, Plaintiff Mildred C. Freeston in to engage

1 a new mortgage by enticement to lower mortgage cost of \$300 per month.
2 The mortgage cost were actually \$372.00 more than prior. During this time
3 my husband Charles E. Freeston was ill and he died and the CHEVY
4 CHASE BANK FSB agent knew of this situation.

5 CHEVY CHASE BANK FSB used predatory tactics, and took
6 advantage of senior citizens. Mildred C. Freeston is 84 years, and Shirsha
7 Sumeru is 65. We had problems with Charles's retirement funds and
8 couldn't make the payments. CHEVY CHASE BANK FSB foreclosed
9 when we couldn't even catch up because the Medicaid - Nursing Home bills
10 were horrendous before Charles's death. CHEVY CHASE BANK FSB
11 engaged BISHOP, WHITE & MARSHALL, P.S. for the foreclosure as
12 trustee.

13 The foreclosure proceeded to conclusion. The house was taken over
14 by FANNIE MAE, on April 3, 2009. FANNIE MAE engaged BISHOP,
15 WHITE & MARSHALL, P.S. as trustees for the sale from CHEVY
16 CHASE BANK FSB and auction process.

17 BISHOP, WHITE & MARSHALL, P.S. acted for both parties. The
18 seller of a foreclosed home CHEVY CHASE BANK FSB and FANNIE
19 MAE, a U.S. Government instrumentality the buyer.

20 ***

21 Bishop, White & Marshall, P.S., filed for eviction unlawful detainer
22 and writ of possession. The hearing was on July 13, 2009 Mildred C.
23 Freeston read into the record a statement relating the fraud. Only then did
24 Commissioner James B. Marshall read our defenses as we were authorized
25 to present according to Washington laws governing such matters.
26 Commissioner Marshal ordered a hearing which has been held off. We
27 believe there is a court date before Commissioner Robyn Lindsay
28 September 15, 2009. Commissioner Marshall ordered BISHOP WHITE &
29 MARSHALL, PS, attorney Annette Cook to respond by briefing the federal
30 law protecting foreclosures like ours.

31 We filed counter complaints to the eviction with submission for
32 record consisting of federal court findings showing MERS had no standing,
33 CHEVY CHASE BANK FSB had no standing to foreclose. The Counter
34 Complaint has never been answered. The Counter Complaint named
35 BISHOP WHITE & MARSHALL, PS, attorney defendants covering up a
36 fraud on a federal instrumentality, FANNIE MAE.

37 Dkt. 2, ¶¶ 3-10.

38 The record reflects that Plaintiffs fell behind on their mortgage payments, were
39 given notice of a Trustee's Sale, refused to vacate the property, and were given notice of
40 an unlawful detainer action. *See* Dkt. 29 at 2-5. Moreover, Defendant Fannie Mae has
41 filed a Writ of Restitution from Pierce County Superior Court stating that Plaintiffs shall
42 be evicted from the property and that the sheriff shall restore the property to Defendant
43 Fannie Mae. Dkt. 31, Declaration of Annette Cook, Exh. A.

III. DISCUSSION

A. Motion to Dismiss

3 Defendants Pierce County, Pierce County Superior Court, Robyn Ann Lindsay,
4 Bryan Chushcoff, Pierce County Sheriff Department, and Paul Pastor move to dismiss
5 Plaintiffs' claim against them. Dkt. 27. In the complaint, Plaintiffs claim that all named
6 Pierce County Defendants "negligently processed Writ of Possession" and that
7 Commissioner Lindsay and Judge Chushcoff "conspired" with the named non-Pierce
8 County Defendants to commit "fraud." Dkt. 8, ¶¶ 3-13. Defendants argue that the Court
9 is without subject matter jurisdiction to hear these claims because they do not confer
10 original jurisdiction under 28 U.S.C. § 1331. Dkt. 27 at 3. The Court agrees.

11 Accordingly, the Court grants the motion and Plaintiffs' claims against Defendants
12 Pierce County, Pierce County Superior Court, Robyn Ann Lindsay, Bryan Chushcoff,
13 Pierce County Sheriff Department, and Paul Pastor are dismissed.

B. Plaintiffs' Motion to Act and Motion for Joinder

15 Although titled as a Motion to Act, Plaintiffs are actually seeking leave to amend
16 their complaint to add Taansen Fairmount Sumeru as a Plaintiff. Dkt. 39. Plaintiff
17 Mildred Freeston claims that she is “not competent in legal matters at all times and
18 need[s] assistance.” *Id.*, ¶ 3. Although leave to amend should be freely given, Fed. R.
19 Civ. P. 15, a party should not be added to an action because the existing plaintiff is having
20 difficulty proceeding pro se. Therefore, the Court denies Plaintiffs’ Motion to Act.

21 Plaintiffs' Motion for Joinder requests the same relief, joinder of Mr. Sumeru, but
22 on the basis that he lives at, and is an heir to, the property in question. Dkt. 38, ¶¶ 6 and
23 8. Neither of these is a sufficient reason for Mr. Sumeru to be added as a plaintiff in this
24 action. While Mr. Sumeru could possibly be a heir to the property in question at some
25 future time, his allegation is completely hypothetical at this time. Therefore, the Court
26 denies Plaintiffs' Motion for Joinder.

1 **C. Plaintiffs' Motions to Strike and Enter Default Judgment**

2 Plaintiffs move to strike Defendants Pierce County, Pierce County Superior Court,
3 Robyn Ann Lindsay, Bryan Chushcoff, Pierce County Sheriff Department, and Paul
4 Pastor's pleadings and request that the Court enter default judgment in the amount of ten
5 million dollars. Dkt. 42. These Defendants have been dismissed and therefore this
6 motion is denied as moot.

7 Plaintiffs also move to strike Defendants Fannie Mae, Bishop, White & Marshall,
8 P.S., William L. Bishop, Jr., Krista L. White, Ann T. Marshal, Daniel Hembree, and
9 Annette Cook's pleadings and request that the Court enter default judgment in the amount
10 of twenty-five million dollars. Dkt. 41. Plaintiffs have failed to provide an adequate
11 reason to strike these pleadings. Moreover, Plaintiffs have failed to establish that entry of
12 default is appropriate under Fed. R. Civ. P. 54. Therefore, the Court denies this motion.

13 **D. Plaintiffs' Motion to Waive Fee**

14 Plaintiffs have appealed the Court's denial of their motion for a preliminary
15 injunction and request that the Court waive the filing fee for the appeal. Dkt. 49. "An
16 appeal may not be taken in forma pauperis if the trial court certifies in writing that it is
17 not taken in good faith." 28 U.S.C. § 1915(a)(3). Although Plaintiffs briefly allege
18 lending violations in their complaint, their motion for an injunction sought the stay of a
19 state unlawful detainer action. The Court held that Plaintiffs had failed to establish every
20 required element for the extraordinary relief requested, namely a federal court staying a
21 state court action for unlawful detainer. Plaintiffs' conclusory claim that this order
22 "needs to be reviewed by appellate judges" does not show that the appeal is in good faith.
23 Therefore, the Court denies Plaintiffs' motion to appeal in forma pauperis.

24 **IV. ORDER**

25 Therefore, it is hereby

26 **ORDERED** that Defendants' Motion to Dismiss (Dkt. 27) is GRANTED and
27 Plaintiffs' claims against Defendants Pierce County, Pierce County Superior Court,
28

1 Robyn Ann Lindsay, Bryan Chushcoff, Pierce County Sheriff Department, and Paul
2 Pastor are **DISMISSED**; Plaintiffs' Motion for Taansen Fairmont Sumeru to Act (Dkt.
3 39) and Motion for Joinder (Dkt. 38) are **DENIED**; Plaintiffs' Motion to Strike Bishop,
4 White & Marshall Filings With Prejudice and Default Order (Dkt. 41) and a Motion to
5 Strike Pierce County Filings With Prejudice and Default Order (Dkt. 42) are **DENIED**;
6 and Plaintiffs' Motion to Waive Filing Fee for Appeal (Dkt. 49) is **DENIED**.

7 DATED this 1st day of February, 2010.

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BENJAMIN H. SETTLE
United States District Judge